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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1216 OF 1997

Keshav Jagan Appellant
versus
Kotubai Shamgel Ladru and others Respondents

Mrs.A.S.Malwankar for appellant.

CORAM : A.S.OKA, J.

DATE : 06th March 2007

PC :

1. The appellant is the original defendant. The respondents are the original plaintiffs. The appeal already stands dismissed as against first, third and fourth respondents. The suit is filed by the respondents contending that one Ladru Pavlu was the owner of the property in question. The said Ladru Pavlu died intestate leaving behind his only son Shamgel. The said Shamgel also expired. The first respondent is the widow of said Shamgel and second to fourth respondents are the daughters of said Shamgel.

2. According to the case of the respondents the property consists of a building comprising of

ground and one upper floor. There are six rooms on the ground floor and two rooms on the first floor. According to the case of the respondents, the appellant was employed as a Manager who had let out the rooms to different persons. One room on the first floor of the property was in possession of the appellant. The case of the respondents was that the petitioner failed and neglected to render accounts and hand over possession of the property which is described in Exhibit-A annexed to the plaint.

3. The suit was contested by the appellant. In the written statement the appellant has not set up any title in himself. The case of the appellant is that he has spent amounts on renovation of the property and a sum of Rs.1.00 lakh is due and payable by the respondents to him on account of the expenditure incurred by him. The Trial Court decreed the suit by directing the appellant to hand over the possession. The Trial Court directed that the case shall be sent to the Commissioner for taking Accounts. The Court Receiver appointed during pendency of the suit has been discharged.

4. The learned advocate appearing for the

appellant submitted that the appellant had admittedly spent amount on renovation of the property and therefore, while taking Accounts, the appellant is entitled to adjustment of the said amount. The case of the appellant is that a substantial amount was spent by the appellant which was more than the rent received from the tenants.

5. I have considered the submissions. In the examination-in-chief the appellant claimed that on the request made by the original plaintiff he incurred the expenditure on reconstruction of the house. According to him, he has spent Rs.60,000/- to Rs.70,000/- on reconstruction and the plaintiffs failed to pay the said amount to him. In cross-examination he admitted that he had no documentary evidence to show that he had spent the amount on building construction. It must be stated here that in the written statement the appellant came out with a case that he has spent Rs.30,000/- for construction. Considering the oral evidence and the stand taken by the appellant in the written statement, the learned Trial Judge has not accepted the case made out by the appellant as regards alleged expenditure incurred by the appellant on repairs. I find no

fault with the said finding. Admittedly, the appellant had let out certain portion of the building and he was recovering the rent. Therefore, no fault can be found with the decree for possession and decree for accounts passed by the Trial Court.

6. It must be noted here that the appeal stands dismissed against first, third and fourth respondents. Third and fourth respondents are the daughters of deceased Shamgel. The decree which is passed in favour of the respondents operates on the ground which is common to all the respondents. As a result of the dismissal of the said appeal as against the said respondents, the decree stands confirmed in favour of the said respondents. In fact only on this ground, the appeal cannot proceed further.

7. No case for interference is made out. Appeal is dismissed. No order as to costs.

8. In view of dismissal of first appeal itself, Civil Application No.8414 of 2007 does not survive and stands dismissed as not surviving.

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(A.S.OKA, J.)